

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In Re:
VAN E. JOHNSON

Debtor

**OBJECTION TO
CONFIRMATION**
Chapter 13
Case No. 09-49420-ESS

Randa R. Simmons, Esq., an attorney duly licensed to practice law in the State of New York and admitted in the Eastern District of New York, affirms the following to be true, under penalty of perjury:

1. I am an associate with the firm of Steven J. Baum, P.C., attorneys for the Secured Creditor, America's Servicing Company as servicer for Bank of America National Association as successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Loan Trusts 2006-6AR ("America's Servicing Company").

2. This Affirmation is submitted for the purpose of objecting to confirmation of the Chapter 13 Plan proposed by Van E. Johnson (the "Debtor").

3. The Debtor's proposed Plan fails to provide for pre-petition arrears due to America's Servicing Company. The Proof of Claim filed on behalf of America's Servicing Company indicates pre-petition arrears owing in the amount of \$71,538.69. A copy of said Proof of Claim is attached hereto as Exhibit 'A'. As the Debtor's proposed plan fails to provide for payment of these arrears, confirmation must be denied pursuant to 11 U.S.C. Section 1322(a)(2).

4. The Debtor's proposed Plan provides for monthly plan payments in the amount of \$500.00 to be paid until the conclusion of an Adversary Proceeding that the Debtor intends to bring against the Secured Creditor. The Plan states that from that \$500.00 no disbursements

are to be made and that the funds are to be used to reflect the Debtor's "intention" and to pay the Trustee.

5. The Secured Creditor objects and notes that it is entitled to receive pre-petition arrears as a Secured Creditor. Furthermore, the case was filed on October 27, 2009 and no Adversary Proceeding has been filed nor is there any indication when an Adversary Proceeding will be filed. The Secured Creditor respectfully submits that there is no provision of the Bankruptcy Code that would permit the Debtor to stop disbursement to the Secured Creditor absent an Order of this Court. The Debtor cannot elect not to distribute funds to the Secured Creditor merely because the Debtor intends, at some unspecified point in time, to bring an Adversary Proceeding which may or may not result in an unfavorable ruling against the Secured Creditor.

6. It is respectfully requested that America's Servicing Company be awarded attorneys fees in the amount of \$400.00 per the terms of the underlying Note and Mortgage for the making of this Objection.

7. By virtue of the foregoing, confirmation of the Debtor's proposed Chapter 13 Plan must be denied pursuant to 11 U.S.C. §1325.

Dated: Buffalo, New York
January 5, 2010

/s/ Randa R. Simmons

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